

Pamela Chyba
C/O:7734 Madrilena Way
Carlsbad, California 92009

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

PAMELA CHYBA

Plaintiff,

vs.

**BAYVIEW LOAN SERVICING, LLC,
AKA BAYVIEW, MARILYN CORO
Defendants,**

Defendants,

Case No. 14-cv-1415-BEN-BLM

**PLAINTIFF'S JUDICIAL NOTICE IN
SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT**

DEMAND FOR JURY TRIAL

Judge: Hon. Roger T. Benitez

Date: February 29, 2015

Time: 10:30 am

Place: Courtroom 5A

1 **TO THE HONORABLE COURT, DEFENDANT'S AND THEIR
2 ATTORNEYS OF RECORD:**

3
4 The Court may take judicial notice of any matter "not subject to reasonable
5 dispute because it: (1) is generally known within the trial court's territorial jurisdiction;
6 or (2) can be accurately and readily determined from sources whose accuracy cannot
7 reasonably be questioned." Fed. R. Evid. 201(b).

8
9
10 The court must take judicial notice if a party requests it and the court is supplied
11 with the necessary information. Fed. R. Evid. 201(c)(2) and 201(d).

12
13 In accordance with Fed. R. Evid. 902(5) which provide "official publications" as
14 self authenticating. Further, public records exception to the hearsay rule, Rule 803(8)
15 this official publication from the Federal Communication Commission should be
16 admitted into evidence.

17
18 Judicial Notice is appropriate for information obtained from governmental
19 websites. See *Deutsche Bank Nat'l Trust Co. v. Adolfo*, 2013 BL 230044, 2013 U.S. Dist.
20 LEXIS 122805, at *4-6 n.4 (N.D. Ill. Aug. 28, 2013) ("The FWP [freewriting
21 prospectus] attached to Deutsche Bank's brief was filed with the SEC, and . . . we may
22 take judicial notice of it". *Paralyzed Veterans of Am. v. McPherson*, 2008 U.S. Dist. LEXIS
23 69542, 17-18 (court took judicial notice if information appearing on and printed from
24 official government website.)

25
26 Plaintiff request that the Court take judicial notice of certain administrative
27
28

1 agency rules and regulations, including the Federal Communications Commission
 2 “FCC” Declaratory Ruling and Order. “[A] Court may take judicial notice of the rules,
 3 regulations and orders of administrative agencies issued pursuant to their delegated
 4 authority.” Int’l Bd. Of Teamsters v. Zantop Air Transp. Corp., 394 F.2d 36, 40 (6th
 5 Cir.1968); *see also* Carter v. Am. Tel. & Tel. Co., 365 F.2d 486 (5th Cir.1966.)
 6
 7

8 Plaintiffs submits this FCC Declaratory Ruling and Order on July 10, 2015
 9 exhibit 1 that further clarifies and defines the TCPA’s definition of “autodialer”,
 10 “predictive dialer” and shows this court Bayview’s equipment only need the
 11
 12 **“capacity”** to autodial numbers.... ***even if it is not presently used for that***
 13 ***purpose.*** The publication can be found at

14 https://apps.fcc.gov/edocs_public/attachmatch/FCC-15-72A1_Rcd.pdf
 15

16 and states at #10 on page 11:

17 “We affirm our previous statements that dialing equipment
 18 generally has the ***capacity to store or produce, and dial***
 19 ***random or sequential numbers (and thus meets the***
 20 ***TCPA’s definition of “autodialer” even if it is not***
 21 ***presently used for that purpose, including when the***
 22 ***caller is calling a set list of consumers. We also reiterate***
 23 ***that predictive dialers, as previously described by the***
 24 ***Commission, satisfy the TCPA’s definition of***
 25 ***“autodialer” for the same reason. We also find that***
callers cannot avoid obtaining consent by dividing
ownership of pieces of dialing equipment that work in
concert among multiple entities.”

26 And states at #12 on page 11:

27 The TCPA defines ***“automatic telephone dialing system”***
 28 ***as “equipment which has the capacity—(A) to store or***

1 produce telephone numbers to be called, using a random or
2 sequential number generator; and (B) to dial such
3 numbers.” In the *2003 TCPA Order*, the Commission found
4 that, in order to be considered an “automatic telephone
dialing system,” the **“equipment need only have the
‘capacity to store or produce telephone numbers.””** The
5 Commission stated that, even when dialing a fixed set of
6 numbers, equipment may nevertheless meet the autodialer
definition.

7
8 And states at #13 on page 13:

9 In the *2003 TCPA Order*, the Commission described a
10 predictive dialer as “equipment that dials numbers and, when
11 certain computer software is attached, also assists
12 telemarketers in predicting when a sales agent will be
available to take calls. The hardware, when paired with
13 certain software, *has the capacity* to store or produce numbers
and dial those numbers at random, in sequential
order, or from a database of numbers.” In the 2008 *ACA*
14 *Declaratory Ruling*, the Commission **“affirm[ed] that a
predictive dialer constitutes an automatic telephone
dialing system and is subject to the TCPA’s restrictions
on the use of autodialers.”** The Commission considered
15 ACA’s argument that a predictive dialer is an autodialer
“only when it randomly or sequentially generates telephone
16 numbers, not when it dials numbers from customer
17 telephone lists,” and stated that ACA raised “no new
18 information about predictive dialers that warrant[ed]
19 reconsideration of these findings” regarding the prohibited
20 uses of autodialers—and therefore predictive dialers—under
21 the TCPA.
22

23 And shows the intentions of Congress to protect consumers at #14 page
24 13:

25 The Commission declined to distinguish between calls to
26 wireless telephone numbers made by dialing equipment
27 “paired with predictive dialing software and a database of
numbers” and calls made “when the equipment operates
28 independently of such lists and software packages.”

1 Recognizing the developments in calling technology, the
 2 Commission found that “[t]he basic function of such
 3 equipment, however, has not changed—the ***capacity*** to dial
 4 numbers without human intervention.” The Commission
 5 found it troubling that predictive dialers, like dialers that
 6 utilize random or sequential numbers instead of a list of
 7 numbers, retain the capacity to dial thousands of numbers in
 8 a short period of time and that construing the autodialer
 9 definition to exclude predictive dialers could harm public
 10 safety by allowing such equipment to be used to place
 11 potentially large numbers of non-emergency calls to
 12 emergency numbers, a result the TCPA was intended to
 13 prevent. ***The Commission concluded that the TCPA’s unqualified use of the term “capacity” was intended to prevent circumvention of the restriction on making autodialed calls to wireless phones and emergency numbers and found that “a predictive dialer falls within the meaning and statutory definition of ‘automatic telephone dialing equipment’ and the intent of Congress.”***

15 The following documents reveal by Bayview’s own admission to using
 16 autodialing equipment as shown in Plaintiff’s prior Judicial Notice dockets 74-5 and 74-
 17 6, (shows Bayview’s officer’s signed and directly reported to the SEC; a government
 18 agency, and provide the facts to establish Bayview ***“uses” and “had the capacity to***
 19 ***use” an “automatic telephone dialing system”.***

22 To preserve Plaintiff’s claim of rights, and make a record for appeal if necessary,
 23 Plaintiff requests this court, if there is any evidentiary controversies regarding this
 24 motion for summary judgment, the court request an evidentiary hearing on the record
 25 in open court to authenticate any controversies between the parties.

27 February 26, 2016

28 s/Pamela Chyba
 Pamela Chyba

1
2
3 **EXHIBIT 1**
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28